
(2010) 03 DEL CK 0202

In the Delhi High Court

Case No : IA No. 16898 of 2009 in CS (OS) 1093 of 2009

Siel Edible Oils Limited (SEOL)

APPELLANT

Vs

Khemka Sales (P) Ltd.

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2010) 03 DEL CK 0202

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sandeep Sethi and Ekta Kapil, for the Appellant; Anil Goel, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—By this application under Order 47 Rule 1 CPC, the plaintiff/applicant has sought review of the order passed by this Court on 7th December, 2009 on the ground that this Court while adjourning the present suit sine die had observed that the Court cannot proceed with the interim application for injunction and the application for injunction has also to be stayed. It is submitted that this observation of the Court was contrary to the settled legal position and the judgments pronounced by Division Bench of this Court and, therefore, there was an error apparent on the face of the order and the order needs review. The plaintiff relied upon Clinique Laboratories LLC and Another Vs. Gufic Limited and Another, wherein this Court observed as under:

14. I thus conclude that a suit for infringement of registered trademark is maintainable against another registered proprietor of identical or similar trademark and in such suit, while staying the further proceedings pending decision of the registrar on rectification, an interim order including of injunction restraining the use of the registered trademark by the defendant can be made by the court, if the court is prima facie convinced of invalidity of registration of the defendant's mark.

2. A similar view was taken by the Division Bench of this Court in Rhizome

Distilleries P. Ltd. and Ors. v. Pernod Ricard S.A. France and Ors. FAO(OS) No. 484 of 2008 decided on 23rd October, 2009 whereby this Court observed as under:

21. Section 124(5) preserves the power of the Court to make any interlocutory order including (a) granting an injunction (b) directing account to be kept, (c) an order appointing a Receiver or (d) an order attaching any property. Plainly, the parenthesis in this Sub-section is superfluous. The last nine words dispel any doubt as to the power of the Court staying proceedings before it as it specifically contemplates that interlocutory orders could be made "during the period of the stay of the suit."

3. This legal position is not controverted by the respondent. I, therefore, consider that the order regarding staying of proceedings on an application for interim injunction is required to be recalled and is therefore hereby recalled. It is, therefore, directed that while the suit shall remain stayed, the interim injunction granted by this Court vide order dated 29th May, 2009 restraining defendant from manufacturing and selling washing soap under the trade name DCM No. 1 shall continue.

4. In the result, the application is allowed and the order dated 7th December 2009 is recalled to the above extent. The application stands disposed of.

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5. The matter be listed before the Regular Bench on 8th April, 2010, subject to orders of Hon"ble The Acting Chief Justice, for disposal of interim application for injunction on merits and for further directions.